UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	:
Plaintiff,	:
v.	:
BRISTOL-MYERS SQUIBB COMPANY,	:
Defendant.	:

COMPLAINT

Plaintiff United States Securities and Exchange Commission (Commission) alleges:

SUMMARY OF ALLEGATIONS

1. From at least the first quarter of its fiscal year 2000, ended March 31, 2000, through at least the fourth quarter of its fiscal year 2001, ended December 31, 2001 (the relevant period), Bristol-Myers Squibb Company (BMS or the Company) engaged in a fraudulent scheme to deceive the investing public about the true performance, profitability and growth trends of the Company and its U.S. medicines business. BMS made false and misleading representations about the performance and profitability of the Company and its U.S. medicines business in: periodic reports filed with the Commission on Forms 10-Q and 10-K, press releases and conference calls with Wall Street securities analysts. BMS inflated its results primarily by: (1) stuffing its distribution channels with large quantities of its pharmaceutical products ahead of demand (excess inventory) near the end of every quarter to meet sales and earnings projections set by the Company's officers (collectively, channel stuffing); and (2) improperly recognizing upon shipment about $1.5 billion in revenue from specially incentivized consignment-like sales

associated with the channel stuffing contrary to generally accepted accounting principles (GAAP). When BMS' results still fell short of the Company's targets and analysts' consensus earnings estimates, the Company used "cookie jar" reserves, to further inflate its earnings. At no time during the scheme did BMS disclose that: (1) it was artificially inflating its results through channel stuffing and improper accounting; (2) channel stuffing was contributing to a buildup in excess wholesaler inventory levels; or (3) excess wholesaler inventory posed a material risk to the Company's future sales and earnings. In July 2001, BMS registered, and thereafter offered and sold $5 billion in debt securities based on certain of its fraudulent financial statements. In March 2003, BMS restated its prior financial statements and admitted that, for 2000 and 2001, the Company overstated net sales by $521 million (2.8%) and $1.284 billion (6.6%), and net earnings from continuing operations before minority interest and income taxes by $389 million (6.9%) and $999 million (31.1%), respectively.

2. Throughout the scheme, BMS circumvented or failed to maintain a system of internal accounting controls sufficient to prevent material misstatements in its books, records, accounts and financial statements. Specifically, BMS internal controls over: revenue recognition, Medicaid and prime vendor rebate liabilities, divestiture reserves, and other accounting items, were inadequate to provide reasonable assurances that the Company's financial statements were prepared in conformity with GAAP, and that all material information regarding BMS' results of operations and accounting was timely communicated to the Company's auditors. As a result, BMS' books, records and accounts were not accurate and BMS officers and employees falsified or caused to be falsified its books, records and accounts.

3. By virtue of the foregoing conduct, BMS, directly or indirectly, engaged and, unless enjoined, will continue to engage in transactions, acts, practices and courses of business

which constitute violations of Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (Securities Act) [15 U.S.C. §§77q(a)(1), 77q(a)(2), and 77q(a)(3)] and Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Securities Exchange Act of 1934 (Exchange Act) [15 U.S.C. §§78j(b), 78m(a), 78m(b)(2)(A), 78m(b)(2)(B) and 78m(b)(5)], and Rules 10b-5, 12b-20, 13a-1, 13a-13 and 13b2-1 [17 C.F.R. §§240.10b-5, 240.12b-20, 240.13a-1, 240.13a-13 and 240.13b2-1] promulgated thereunder.

4. The Commission seeks an order permanently enjoining BMS from further violations of the federal securities laws as alleged herein. The Commission also seeks disgorgement of all ill-gotten gains BMS derived from its violations of the federal securities laws and a civil monetary penalty.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(e), 78aa] and 28 U.S.C. §1331.

6. Venue is proper in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §78aa].

7. In connection with the transactions, acts, practices and courses of business alleged in this Complaint, BMS, directly or indirectly, made use of the means or instrumentalities of interstate commerce or of the mails. Some of these transactions, acts, practices and courses of business occurred within the District of New Jersey.

DEFENDANT

8. BMS is a Delaware corporation with offices and significant operations in New Jersey. BMS is a pharmaceutical and related health care products company. At all relevant

times, BMS' securities were registered with the Commission pursuant to Section 12(b) of the Exchange Act and its common stock was actively traded on the NYSE.

THE FRAUDULENT CONDUCT

A. BACKGROUND

9. BMS' primary business is and was, at all relevant times, the sale of prescription pharmaceutical products.

10. During the relevant period, BMS sold its pharmaceutical products in the United States through its U.S Medicines Group.

11. During the relevant period, certain BMS officers pressured the Company's business units, particularly the U.S. Medicines Group, to take steps to ensure that the Company's reported results met or exceeded the Company's targets.

12. During the relevant period, BMS recognized revenue from sales of its pharmaceutical products upon shipment.

13. During the relevant period, BMS sold its pharmaceutical products primarily to a small number of U.S. wholesalers.

14. During the relevant period, BMS filed the following periodic reports with the Commission pursuant to Section 13(a) of the Exchange Act and the rules and regulations promulgated thereunder, each of which contained the consolidated financial statements of BMS and its subsidiaries:

Period	**Date Filed**	**Form**
Quarter ended March 31, 2000	5/15/00	10-Q
Quarter ended June 30, 2000	8/15/00	10-Q
Quarter ended Sept. 30, 2000	11/14/00	10-Q

Period	Date Filed	Form
Year ended Dec. 31, 2000	3/30/01	10-K
Quarter ended March 31, 2001	5/15/01	10-Q
Quarter ended June 30, 2001	8/14/01	10-Q
Quarter ended Sept. 30, 2001	11/14/01	10-Q

15. During the relevant period, BMS' stock was covered by Wall Street securities analysts who routinely issued quarterly and annual earnings estimates based, in significant part, on information publicly communicated by the Company through: periodic reports on Forms 10-Q and 10-K, press releases and conference calls with analysts.

B. BMS' EARNINGS MANAGEMENT SCHEME

1. BMS' History of Channel Stuffing

16. In the fourth quarter of 1991, prior to the conduct that is the subject of this action, BMS sold large quantities of its pharmaceutical products to its wholesalers in advance of a January 1992 price increase, which contributed to a significant buildup in wholesaler inventory. In the first two quarters of 1992, wholesaler destocking significantly depressed BMS' financial results. In a June 1992 press release, BMS admitted that its results were being significantly depressed by wholesaler destocking. The Company also admitted that wholesaler destocking was likely to continue in future quarters and, as a result, the Company significantly lowered its earnings projections for 1992. Following this announcement, BMS' share price dropped about 11%, from 73¾ to 65¾. Shareholders, in turn, filed class action lawsuits alleging that BMS' officers deliberately misled the market, and negative press soon followed. BMS purportedly responded by, among other things, modifying its internal controls to more closely monitor and

restrict wholesaler purchases. BMS engaged in the channel stuffing conduct that is the subject of this action despite these purportedly enhanced internal controls.

2. The "Double-Double"

17. In or about 1994, BMS publicly announced a plan to double the sales, earnings and earnings per share that the Company reported for its fiscal year 1993 by the end of its fiscal year 2000. BMS called this plan the "Double-Double."

18. At various times following the announcement of the Double-Double, BMS publicly reaffirmed its commitment to the Double-Double and emphasized that the Company was on track to achieve the plan's goals.

19. Each year from 1994 through 2001, BMS officers prepared a budget for the Company that included targets for each of the Company's business units to meet in order to achieve the Double-Double, and a subsequent growth plan called the Mega-Double.

3. Channel Stuffing to Achieve the Double-Double

20. By in or about the fourth quarter of 1997, BMS began confronting millions of dollars in gaps between the targets it had set for its business units and their actual operating results.

21. Certain BMS officers pressured the U.S. Medicines Group to help make up the shortfalls that would be caused by these gaps by, among other things, raising the targets for the Company's pharmaceutical business units above those originally set forth in the Company's annual budget.

22. In or about the fourth quarter of 1997, the U.S. Medicines Group responded to this pressure primarily by inducing the Company's wholesalers to purchase $40 to $50 million of excess inventory of BMS' pharmaceutical products.

23. In or about February 1998, the Vice President of Finance in the U.S. Medicines Group objected to this tactic. This executive raised her concerns with certain BMS officers hoping it would dissuade them from accelerating sales ahead of demand in future periods. It did not.

24. When this practice continued over the first two quarters of 1998, the Vice President of Finance for the U.S. Medicines Group met with BMS' Controller, among others, and told him, in substance, that she was uncomfortable remaining in her position because of the U.S. Medicines Group's sales practices. The Controller responded by offering to find her another position within the Company where she might feel more "comfortable." In or about September 1998, she was reassigned outside the medicines business. At this time, BMS' wholesalers were carrying excess inventory of about $125 million.

25. In or about July 1999, BMS entered into an agreement to pay its second largest wholesaler 2% of the value of any excess inventory it agreed to take, per month, until this wholesaler sold the products. For purposes of this agreement, BMS permitted its second largest wholesaler to treat anything over two weeks on hand as excess inventory. BMS agreed to pay the 2% to this wholesaler through sales incentives on future purchases, primarily in the form of price discounts. BMS knew that these payments covered this wholesaler's costs of carrying excess inventory, and guaranteed this wholesaler would earn its target return on investment (ROI) of about 24% per year on any excess inventory this wholesaler agreed to take (ROI Agreement).

26. Since all of the risks of ownership of any excess inventory did not pass to this wholesaler upon shipment of goods pursuant to the ROI Agreement, GAAP, specifically SAB 101, did not permit BMS to recognize revenue from such transactions at the time of shipment.

Nevertheless, from July 1999 through December 2001, BMS improperly recorded revenue from all shipments to this wholesaler pursuant to the ROI Agreement *upon shipment,* contrary to GAAP.

27. In or about August and October 1999, certain BMS officers met to discuss the 2000 budget. During these meetings, the head of the Worldwide Medicines Group presented a summary of his Group's projections and stated that he anticipated about 12% growth in 2000, with only 5% growth in the first quarter, far lower than BMS needed to achieve the Double-Double. He also stated that the U.S. Medicines Group, which was the driver of his group's growth, had to be slower in the first half of 2000 in order to keep excess wholesaler inventory from increasing. At the end of the third quarter of 1999, excess wholesaler had risen to about $180 million. Shortly after the October 1999 meeting, he was reassigned to a position outside the medicines business. Within BMS, his reassignment was widely regarded as a message that anyone challenging the targets sought by BMS' officers would be removed or reassigned.

28. The 2000 budget ultimately approved by BMS targeted the Worldwide Medicines Group to grow by 17% in 2000 and the U.S. Medicines Group to grow in excess of 20%. BMS knew from the budget presentations by the head of the medicines business in August and October 1999 that these targets were extremely aggressive and would require the Company to continue engaging in channel stuffing in 2000. BMS also knew that this practice would cause excess wholesaler inventory to increase in 2000.

29. From the first quarter of 2000 through the fourth quarter of 2001, BMS' U.S. Medicines Group engaged in channel stuffing near the end of each quarter in order to meet the targets for 2000 and 2001 established by BMS' officers, as reflected in the budgets for 2000 and 2001, and incremental targets assigned to the U.S. Medicines Group by BMS officers to help

close the Company-wide gaps between the targets BMS set for its business units and their actual operating results.

30. BMS' channel stuffing in 2000 and 2001 resulted in a steady build-up in excess wholesaler inventory.

31. At various times during 2000 and 2001, executives both within and outside of BMS' U.S. Medicines Group warned certain BMS officers about the buildup in excess wholesaler inventory caused by channel stuffing and the rising costs BMS was incurring from the sales incentives the Company was granting wholesalers to induce them to take excess inventory.

32. On or about February 11, 2000, three executives in the U.S. Medicines Group, including the Vice President of Finance of the U.S. Medicines Group and the head of trade sales, met with certain BMS officers. At that meeting, the three U.S. Medicines Group executives warned the BMS officers about the buildup in excess wholesaler inventory resulting from channel stuffing over the preceding five quarters, and the rising costs of the sales incentives that were being granted to wholesalers to induce them to take excess inventory. In this meeting, the three U.S. Medicines Group executives explained, among other things: (1) the use of wholesaler sales incentives to boost domestic pharmaceutical sales; (2) the buildup in excess wholesaler inventory over the preceding five quarters; (3) the types of sales incentives that were being offered to wholesalers to induce them to buy more inventory; (4) the percentage and dollar value of U.S. pharmaceutical sales as to which wholesaler incentives had been offered; (5) the tendency of sales to spike in the third month of every quarter; (6) that the sales incentives BMS was using to induce wholesalers to take excess inventory each quarter were costing the Company

millions of dollars each quarter, and such costs were increasing; and (7) the buildup in excess wholesaler inventory could negatively impact BMS' future sales and earnings.

33. On or about February 18, 2000, notwithstanding the U.S. Medicines Group's warning on February 11th about the buildup in excess wholesaler inventory, BMS officers approved an additional $180 million in pharmaceutical sales to wholesalers to bring February sales closer to projections. BMS extended payment terms by 30 days for wholesalers agreeing to take these additional products. As a result, excess wholesaler inventory rose to about $230 million by the end of the first quarter of 2000. In addition, the extended payment terms reduced the Company's first quarter cash flow by $180 million, and cost the Company millions of additional dollars in lost interest income.

34. On or about March 15, 2000, executives in the U.S. Medicines Group, including the Vice President of Finance, again warned certain BMS officers, including the Company's chief financial officer (CFO), about the buildup in excess wholesaler inventory, the risk that the buildup in excess wholesaler inventory posed to BMS' future sales and earnings, and the rising costs of the wholesaler incentives, and recommended that BMS take steps to reduce excess wholesaler inventory by the end of 2000. BMS' CFO responded by stating that he believed the Company should limit excess wholesaler inventory to $200 million. However, with the knowledge and approval of at least two BMS officers, BMS instead engaged in channel stuffing near the end of every subsequent quarter in 2000 and 2001 to meet the Double-Double and Mega-Double targets.

35. In or about March 2000, BMS retained an outside consultant (Consultant) to study the buildup in excess wholesaler inventory, the wholesaler sales incentives and the Company's relationships with its wholesalers (wholesaler inventory project).

36. From in or about April to May 2000, in connection with the wholesaler inventory project, the Consultant investigated the nature of BMS' relationship with its wholesalers, the magnitude of the buildup of excess inventory and the likely effects on BMS' current and future operations.

37. On or about May 19, 2000, the Consultant presented its findings from the wholesaler inventory project to two BMS officers, the Company's Controller and the head of the medicines business, informing them, among other things, that: (1) BMS' wholesalers were carrying between $230 million of excess inventory at the end of the first quarter of 2000, assuming wholesalers needed one month of inventory on hand for normal operations, and $387 million of excess inventory, assuming wholesalers needed only 21 days of inventory on hand for normal operations; (2) BMS' wholesalers were carrying high levels of excess inventory, both in absolute terms, and relative to competitors; (3) excess wholesaler inventory "pose[d] risks to earnings" because wholesalers would eventually work down such inventory by destocking, and wholesalers would pass on the increased costs of carrying excess inventory to BMS since they "expect a return on investment above their cost of capital"; (4) "the high levels of [excess wholesaler] inventory and the wholesalers' knowledge of [BMS'] need to meet quarterly targets may increase the wholesalers' leverage"; and (5) the cost of the wholesaler incentives had increased from $2.31 million in the first quarter of 1999 to $7.65 million in the first quarter of 2000, and were continuing to increase beyond that.

38. The Consultant recommended that BMS take steps to reduce excess wholesaler inventory levels. However, BMS did not follow this recommendation.

39. Instead, in or about July 2000, BMS entered into an agreement with its largest wholesaler to ensure that its largest wholesaler would continue to take on additional excess

inventory. This agreement was substantially similar to the ROI Agreement the Company entered into with its second largest wholesaler about a year earlier. Specifically, the Company agreed to guarantee this wholesaler an annualized ROI of at least 25% on any excess inventory this wholesaler agreed to take. However, for purposes of this agreement, BMS allowed this wholesaler to treat anything over three weeks on hand as excess inventory. BMS further agreed that, if this wholesaler's ROI on excess inventory fell below 25%, the Company would provide this wholesaler with sales incentives on future purchases, primarily in the form of price discounts.

40. BMS knew that this ROI Agreement covered this wholesaler's costs of carrying excess inventory, and guaranteed this wholesaler would meet its target ROI of about 25 percent on any excess inventory this wholesaler agreed to take. Since all of the risks of ownership did not pass to this wholesaler upon shipment of goods pursuant to this ROI Agreement, GAAP did not permit BMS to recognize revenue from sales to this wholesaler pursuant to the ROI Agreement upon shipment. Nevertheless, from July 2000 through at least December 2001, BMS improperly recognized revenue from sales to this wholesaler pursuant to this ROI Agreement *upon shipment*, contrary to GAAP.

41. In or about August 2000, the U.S. Medicines Group warned BMS officers that the Company had to offer additional sales incentives to the Company's wholesalers to induce them to agree to take $200-250 million in additional pharmaceutical products in order for the Company to achieve the August sales targets.

42. On September 28, 2000, BMS publicly announced an even more aggressive growth goal than the Double-Double, called the "Mega-Double." The Mega-Double

significantly increased the pressure on the U.S. Medicines Group to find ways to generate incremental sales and earnings.

43. On October 19, 2000, BMS conducted a conference call with analysts to discuss its third quarter results. During that call, an analyst asked BMS to "review any wholesaler inventory actions in the quarter on various products." The head of BMS' Worldwide Medicines Group falsely stated: "I don't think there was really any significant wholesaler inventory activity in the quarter." He failed to disclose that: (1) BMS was engaging in channel stuffing to meet the targets and guaranteeing its two largest wholesalers specified returns on any excess inventory they agreed to take until they sold the products; (2) channel stuffing was causing a buildup in excess wholesaler inventory; (3) BMS' wholesalers were carrying extraordinarily high levels of excess inventory, in absolute and relative terms, and (4) excess wholesaler inventory posed a risk to BMS' future sales and earnings. At this time, the excess inventory that BMS' wholesalers were carrying had risen to about $300 million.

44. On or about November 15, 2000, BMS filed its third quarter Form 10-Q. The Company again failed to disclose its channel stuffing activities, the buildup in excess wholesaler inventory, or that the buildup in excess wholesaler inventory posed a material risk to the Company's future sales and earnings.

45. In the fourth quarter of 2000, with the knowledge of at least two BMS officers, BMS again engaged in channel stuffing near the end of the quarter to meet the targets and achieve the Double-Double, which contributed to a further buildup in excess wholesaler inventory. By the end of the fourth quarter of 2000, excess inventory had risen to about $500 million.

46. On January 24, 2001, BMS issued a press release announcing its results for the fourth quarter of 2000 and for the full year 2000. In the release, the Company in essence stated that it accomplished the Double-Double. Specifically, the Company stated, "We have moved from single-digit growth rates seven years ago to an accelerated rate of 15%, helping us to meet the goal we set back then of doubling earnings and earnings per share by the end of 2000, essentially doubling the size of the Company over that period." BMS failed to disclose that its growth was achieved, in significant part, through channel stuffing by guaranteeing its two largest wholesalers specified returns on any excess inventory they agreed to take until they sold the products. BMS also failed to disclose that channel stuffing was causing a buildup in excess wholesaler inventory, which posed a material risk to the Company's future sales and earnings.

47. On or about April 25, 2001, BMS announced record-breaking results for the first quarter of 2001. In a conference call with analysts that day to discuss BMS' first quarter 2001 results, BMS' new CFO misled investors about the excess wholesaler inventory situation. Specifically, an analyst asked: "[G]iven the large number of price increases in Q1, any unusual buying patterns we need to be aware of in Q2?" The new CFO answered:

> … We look at, very closely, the wholesaler stocking inventories, and we've looked at it very closely this quarter as well as with all previously. There are no unusual items that we see at this quarter compared to at year-end. Everything we see is right on target, right consistent with our plans. So there are no unusual items that we see in the inventory levels.

The CFO did not disclose that: (1) excess wholesaler inventory had risen to about $650 million by the end of the first quarter of 2001; (2) BMS was channel stuffing to meet the Mega-Double targets by guaranteeing its two largest wholesalers specified returns on any excess inventory these wholesalers agreed to take until they sold the products; (3) channel stuffing was causing a steady buildup in excess wholesaler inventory; (4) BMS' wholesalers were carrying

extraordinarily high levels of excess inventory; and (5) excess wholesaler inventory posed a material risk to the Company's future sales and earnings.

48. In or about July 2001, with the knowledge and approval of certain BMS officers, the Company decided to announce a price increase for wholesalers, in part, to induce wholesalers to purchase even more excess inventory currently. Prior to the effective date of the new pricing policy, BMS permitted its wholesalers to purchase four weeks of additional inventory of BMS' pharmaceutical products at the current, lower prices. As a result, excess wholesaler inventory levels climbed even higher in the following months.

49. On or about August 14, 2001, the Vice President of Finance for the U.S. Medicines Group informed the head of the medicines business and BMS' CFO that "we could close the quarter to meet projection, but we would add significantly to the wholesaler pipeline in the process and pay incremental dollars to wholesalers for their carrying costs. Wholesaler inventories would grow even larger at the current 4Q projection …"

50. On or about August 29, 2001, the Vice President of Finance for the U.S. Medicines Group informed the head of the medicines business and the CFO that, "as a result of delivering orders placed by customers for Q3, … excess inventory at the wholesalers will increase … an additional $470 million over Q2 ..."

51. In or about October 2001, at a meeting attended by certain BMS' officers, the Vice President of Finance of the U.S. Medicines Group stated that: (1) he estimated there was $900 million to $1 billion in excess wholesaler inventory in the channel; and (2) he considered excess wholesaler inventory to be the most serious risk to the U.S. Medicines Group meeting its projections for 2002. The Vice President of Finance of the U.S. Medicines Group also explained that the $900 million to $1 billion of excess inventory in the channel represented $900 million to

$1 billion of pharmaceutical products that BMS' wholesalers would not need to purchase in 2002.

52. On or about October 23, 2001, BMS announced its third quarter 2001 results, but again failed to disclose that: the Company was engaging in channel stuffing and guaranteeing its two largest wholesalers a specified return on investment on any excess inventory they agreed to carry; channel stuffing was causing an extraordinary buildup in excess wholesaler inventory; and excess wholesaler inventory posed a material risk to the Company's future sales and earnings. BMS also failed to disclose that the Company was incurring tens of millions of dollars in costs per quarter from the sales incentives to its two largest wholesalers to guarantee them specified returns on any excess inventory they agreed to take until they sold the products.

53. On or about October 23, 2001, in a conference call with securities analysts regarding BMS' third quarter results, BMS' CFO misled the market, stating: "Our wholesaler inventory levels in the U.S. overall increased a couple of weeks. [The Company] anticipate[s] lower levels in the fourth quarter." The CFO failed to disclose that: (1) BMS had been channel stuffing near the end of every quarter since at least the first quarter of 1999 and guaranteeing its two largest wholesalers specified returns on any excess inventory they agreed to take until these wholesalers sold the products; (2) channel stuffing had caused excess wholesaler inventory of BMS' products to steadily increase to at least $1 billion at the time of the call; and (3) at the time of the call, BMS had no plan to work down excess wholesaler inventory in the fourth quarter of 2001.

54. On December 18, 2001, the head of BMS' U.S. Primary Care Division, a division of the U.S. Medicines Group, warned a BMS officer about the high levels of wholesaler inventory in the channel.

55. At no time during 2000 or 2001 did BMS disclose that: (1) it was materially inflating its results through channel stuffing and guaranteeing its two largest wholesalers specified returns on any excess inventory they agreed to take until these wholesalers sold the products; (2) channel stuffing was causing a steady buildup in excess wholesaler inventory; (3) excess wholesaler inventory posed a material risk to the Company's future sales and earnings; and (4) the sales incentives the Company was granting to its two largest wholesalers to induce them to take excess inventory was costing BMS millions of dollars each quarter and these costs were rapidly increasing.

3. Additional Improper Accounting

a. "Cookie Jar" Reserves

56. When BMS' results fell short of Wall Street's consensus earnings estimates despite its efforts to stuff excess inventory into the channel, the Company used "cookie jar" reserves to further inflate its earnings in order to meet those estimates.

57. During the relevant period, in furtherance of the scheme and to manage earnings, BMS created phony divestiture reserves that could be reversed into earnings in subsequent quarters when the Company needed a penny or two per share of earnings in order meet BMS' earnings targets and the Wall Street analysts' consensus earnings estimate. BMS thereby fraudulently transformed one-time gains into operating income, thus giving investors the false impression that BMS' continuing operations had met or exceeded its targets.

58. BMS improperly created and reversed reserves in connection with divestitures in at least the following amounts:

Year	Amount of Divestiture Reserves Inappropriately Established	Divestiture Reserves Inappropriately Reversed Into Income
2000	$104 million	$ 66 million
2001	$115 million	$157 million

59. For each divestiture, BMS' Corporate Controller, and later CFO, reviewed an assistant controller's calculation of the gain (or loss) on the transaction. GAAP permits a company to establish reserves only for identifiable, probable and estimable risks. Instead, in each case, the Controller inflated the reserves above what the assistant controller had determined to be necessary to cover the costs associated with the transaction, contrary to GAAP.

60. The Controller told his assistant controllers that he wanted no surprises, smooth earnings, and no unusual gains or losses that BMS would have to explain to investors. As a result, his assistant controllers inflated reserves as directed. The Controller also suggested that his assistant controllers create inappropriate "corporate contingency" reserves not in accordance with GAAP in addition to the reserves established for identified costs or expenses associated with the divestiture transactions in question. The Controller approved all of his assistant controllers' gain calculations, along with the reserves created in connection with each divestiture.

61. Following the creation of these cookie jar reserves, the Controller oversaw and approved the improper reversal of portions of such reserves into operating income.

62. The Controller kept track of the "corporate contingency" reserves, and other inflated reserve accounts, by recording them on a reserve schedule. The reserve schedule

operated as a scorecard that tracked, on a quarterly basis, when cookie jar reserves were created, and when they were reversed into operating income. The head of the corporate staff accounting department, who reported to the Controller, maintained the reserve schedule. Only excess reserves that could be reversed into earnings were placed on the reserve schedule. The Controller decided which reserves were placed on the schedule and which reserves were removed or reversed into earnings, or his assistant controllers did so with his approval.

63. BMS used these cookie jar reserves to give the Company the incremental earnings it needed to falsely claim that it met analysts' consensus earnings estimates in the second quarter of 2000, and the first, third and fourth quarters of 2001.

64. In March 2003, BMS restated most of the divestiture reserves listed on the reserve schedules. In its March 2003 restatement, BMS admitted that there was no "quantifiable or specific category of liability supporting the establishment of ... portions of these liabilities and such amounts were ultimately inappropriately reversed."

b. <u>Failure to Properly Accrue for Medicaid and Prime Vendor Rebate Liabilities</u>

65. As a result of the buildup in excess wholesaler inventory, BMS materially understated its accruals for certain rebate liabilities incurred by the Company in connection with pharmaceutical sales of about $3.7 billion associated with its channel stuffing.

66. BMS knew that a portion of its pharmaceutical products would be sold by the wholesalers to Medicaid recipients or prime vendors. Prime vendors are customers of the wholesalers who purchase large quantities of BMS' products. BMS knew that it had alternate pricing arrangements with these customers and these special pricing arrangements required BMS to pay rebates to these customers. The Medicaid Rebate Program is a federal program that is managed by the individual member states. The purpose of the Medicaid Rebate Program is to

ensure that Medicaid pays outpatient drug prices that are as low as the prices paid by managed healthcare plans or other customers. That objective is met through the payment of rebates by drug manufacturers, such as BMS, to state Medicaid agencies.

67. Under GAAP, at all relevant times, BMS was required to estimate and accrue for Medicaid and prime vendor rebate liabilities at the time of sale to the wholesalers by recording a reduction to revenue and a corresponding liability.

68. As explained above in paragraphs 20 through 55, BMS sold excess inventory to its wholesalers near the end of every quarter in 2000 and 2001 to meet the annual budget targets set by BMS' officers, which were driven by the Double-Double and Mega-Double growth goals. GAAP required BMS to estimate and accrue for Medicaid and prime vendor rebate liabilities on all sales at the time of sale to wholesalers. However, at the insistence of the Controller, and later the CFO, BMS did not fully accrue for Medicaid and prime vendor rebate liabilities with respect to the excess inventory of BMS' pharmaceutical products at the wholesalers, contrary to GAAP.

69. As a result of understating its accruals for Medicaid and prime vendor rebate liabilities, BMS inflated its pre-tax earnings in 2001 and 2000 by $145 million and $117 million, respectively.

70. On or about April 25, 2002, BMS admitted that it underaccrued for Medicaid and prime vendor rebate liabilities in 2000 and 2001 in connection with pharmaceutical sales associated with the channel stuffing, and took a one-time adjustment to increase these accruals. This one-time adjustment reduced the Company's first quarter 2002 pre-tax net earnings by $262 million.

C. THE SCHEME UNRAVELS

71. In or about February 2002, BMS initiated an internal investigation of wholesaler incentives.

72. By late March 2002, BMS' internal investigation confirmed the channel stuffing activities explained above, including the ROI Agreements with its top two wholesalers.

73. On April 1, 2002, BMS filed its Form 10-K for 2001 and, in the Management Discussion and Analysis section, partially disclosed its channel stuffing activities:

> Average wholesaler inventories of products in the U.S. increased during 2001 by approximately four weeks of its average sales to these wholesalers primarily due to sales incentives offered by the Company to them. As a result, the Company estimates the Company's 2001 domestic pharmaceutical sales included approximately four weeks of additional sales. The Company believes current inventories of its products held by wholesalers in the U.S. significantly exceed levels the Company considers desirable on a going forward basis. The Company is in the process of developing a plan (wholesaler inventory work down plan) to reduce these wholesaler inventory levels. This Company expects this reduction in wholesaler inventories to lower levels will negatively impact its results in future periods.

74. On April 3, 2002, BMS announced that its past earnings projections were "dramatically off track," and warned investors that its 2002 earnings could drop by as much as 46 percent, in part, because of anticipated wholesaler destocking in 2002. BMS also disclosed that the Company's wholesaler inventory workdown plan would negatively impact its pre-tax earnings by $0.35 to $0.40 per share, or about $800 million to $1 billion. BMS also announced that, because of these problems, the head of the medicines business would be leaving the Company, the Company's Chairman and CEO had personally assumed responsibility for the medicines business, and the Company had taken other steps to address the excess wholesaler inventory problem. As a result of the disclosures on April 1st and April 3rd, BMS' share price

dropped $8.34 from $40.49, its closing price on March 28, 2002, to $32.15, its closing price on April 4, 2002, a decline of about 20%.

75. On October 24, 2002, BMS announced that it expected to restate approximately $2 billion in sales primarily from fiscal 2000 and 2001 due to revenue recognition timing errors. The Company also disclosed that the decision to restate was based on "further review and consideration of the company's accounting for its previously disclosed wholesaler inventory situation and on recent advice from the company's auditors, P[wC]…" In response to this announcement, the Company's stock further dropped from $24.79 to $24.17.

E. THE RESTATEMENT

76. In March 2003, BMS restated its financial statements for 1997 through the first two quarters of 2002. In its March 2003 restatement, BMS admitted:

> The Company experienced a substantial buildup of wholesaler inventories in its U.S. pharmaceuticals business over several years, primarily in 2000 and 2001. This buildup was primarily due to sales incentives offered by the Company to its wholesalers. These incentives were generally offered towards the end of a quarter in order to incentivize wholesalers to purchase products in an amount sufficient to meet the Company's sales projections established by the Company's officers.

77. In its March 2003 restatement, the Company also admitted, among other things, that: (1) from the third quarter of 1999 through the fourth quarter of 2001, the Company improperly recognized upon shipment nearly $2 billion in revenue from pharmaceutical sales to its two largest wholesalers; (2) as a result of sales incentives offered to its other wholesalers, there was a buildup at these other wholesalers "in the range of $550 to 750 million at December 31, 2001"; (3) the Company improperly created, reversed or otherwise improperly accounted for acquisition, divestiture and restructuring reserves; (4) the Company committed numerous other books and records violations, including improper accounting for: product returns, dividends, and other items, which, further inflated its 2001 and 1999 earnings, in the aggregate, by $37 million

and $139 million respectively; (5) the "errors and inappropriate accounting resulted, at least, in part, from a period of unrealistic expectations, and consequent overestimation of products"; and (6) PwC had identified and communicated two "material weaknesses" relating to the Company's accounting and public financial reporting of significant matters, and its initial recording and management review and oversight of certain accounting matters. On March 10, 2003, the day BMS announced the Restatement, the Company's share price further dropped from about $21.32, the previous day's closing price, to about $21.04.

COUNT I

Violations of Section 17(a)(1) of the Securities Act of 1993
[15 U.S.C. §77q(a)(1)]

78. Paragraphs 1 through 64 and 71 through 77 are realleged and incorporated by reference as if set forth fully herein.

79. In or about July 2001 and later, BMS, in the offer or sale of securities, by the use of the means or instruments of transportation and communication in interstate commerce or by use of the mails, directly or indirectly: employed devices, schemes or artifices to defraud, as described above in paragraphs 9 through 65 and 71 through 78.

80. BMS knew or was reckless in not knowing of the facts and circumstances described above in Paragraphs 9 through 65 and 71 through 77.

81. By reason of the activities described in paragraphs 78 through 80, BMS violated Section 17(a)(1) of the Securities Act of 1933 [15 U.S.C. §77q(a)(1)].

COUNT II

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 [15 U.S.C. §§77q(a)(2) and 15 U.S.C. §77q(a)(3)]

82. Paragraphs 1 through 64 and 71 through 77 are realleged and incorporated by reference as if set forth fully herein.

83. In or about July 2001, and later, BMS, in the offer and sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, directly or indirectly: obtained money by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engaged in transactions, practices or courses of business which operated as a fraud or deceit upon the purchasers of such securities, as set forth above in paragraphs 9 through 64 and 71 through 78.

84. By reason of the activities described in paragraphs 82 and 83, BMS violated Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1993 [15 U.S.C. § 77q(a)(2), §77q(a)(3)].

COUNT III

Violations of Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] and Rule 10b-5 Promulgated Thereunder [17 C.F.R. §240.10b-5]

85. Paragraphs 1 through 64 and 71 through 77 are realleged and incorporated by reference as if set forth fully herein.

86. From at least the first quarter of 2000 (ended March 30, 2000) through at least the fourth quarter of 2001 (ended December 31, 2001), as a result of the activities described above in paragraphs 9 through 64 and 71 through 78, BMS, in connection with the purchase or sale of securities, by the use of the means and instrumentalities of interstate commerce, the mails, or the facilities of a national securities exchange, directly or indirectly: (a) employed devices, schemes

or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated as a fraud or deceit upon purchasers and sellers of securities in violation of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder.

87. BMS knew or was reckless in not knowing of the facts and circumstances described in paragraphs 9 through 64 and 71 through 77 above.

88. By reason of the activities described in paragraphs 86 through 88, BMS violated Sections 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5.]

COUNT IV

Violations of Section 13(b)(5) of the Securities Exchange Act of 1934 [15 U.S.C. §78m(b)(5)]

89. Paragraphs 1 through 77 are realleged and incorporated by reference as if set forth fully herein.

90. From the first quarter of 2000 through the fourth quarter of 2001, BMS engaged in fraudulent earnings management scheme in the course of which the Company knowingly circumvented or knowingly failed to implement a system of internal accounting controls and knowingly falsified books, records, and accounts of the Company that were subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §78m(b)(2)].

91. By reason of the activities described in paragraphs 89 and 90 above, BMS violated Section 13(b)(5) of the Securities Exchange Act of 1934 [15 U.S.C. §78m(b)(5)].

COUNT V

Violation of Rule 13b2-1 of the Securities Exchange Act of 1934 [17 C.F.R. §240.13b2-1]

92. Paragraphs 1 through 77 are realleged and incorporated by reference as if set forth fully herein.

93. At various times between January 2000 and December 2001, as specifically alleged in paragraph 56 through 64 above, BMS, directly and indirectly, falsified or caused to be falsified books, records and accounts subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §78m(b)(2)(A)].

94. By reason of the activities described in paragraphs 92 and 93 above, BMS violated Rule 13b2-1 of the Securities Exchange Act of 1934 [17 C.F.R. 240.13b2-1] promulgated under Section 13(b)(2) of the Exchange Act [15 U.S.C. §78m(b)(2)].

COUNT VI

Violations of Section 13(a) of the Securities Exchange Act of 1934 [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 Promulgated Thereunder [17 C.F.R. §§240.12b-20, 240.13a-1, and 240.13a-13]

95. Paragraphs 1 through 77 are realleged and incorporated by reference as if set forth fully herein.

96. As explained above in paragraphs 9 through 77, BMS materially overstated the Company's revenue and net income on its books and records and in financial statements included in the periodic reports identified above in paragraph 14.

97. From the first quarter of 2000 through the fourth quarter of 2001, BMS failed to file with the Commission, in accordance with the rules and regulations prescribed by the Commission, such annual and quarterly reports as the Commission has prescribed and BMS failed to include, in addition to the information expressly required to be stated in such reports,

such further material information as was necessary to make the statements made therein, in light of the circumstances in which they are made, not misleading.

98. By reason of the activities described in paragraphs 95 through 97 above, BMS violated Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 12b-20, 13a-1, and 13a-13 [17 C.F.R. §§240.12b-20, 240.13a-1, and 240.13a-13] promulgated thereunder.

COUNT VII

Violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 [15 U.S.C. §§78m(b)(2)(A) and 78m(b)(2)(B)]

99. Paragraphs 1 through 77 are realleged and incorporated by reference as if set forth fully herein.

100. From January 2000 and through at least December 2001, BMS, directly and indirectly, failed to make and keep books, records, and accounts, which in reasonable detail accurately and fairly reflected the transactions and dispositions of the assets of BMS.

101. From January 2000 through at least December 2001, BMS failed to devise and maintain a system of adequate internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles or any other criteria applicable to such statements.

102. By reason of the activities described in paragraphs 100 through 101 above, BMS violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 [15 U.S.C. §§78m(b)(2)(A) and 78m(b)(2)(B)].

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that the Court:

I.

Issue findings of fact and conclusions of law that BMS committed the violated charged and alleged herein.

II.

Issue an Order of Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendant BMS, its officers, agents, servants, employees, attorneys, assigns and all those persons in active concert or participation with them who receive actual notice of the Final Judgment by personal service or otherwise, and each of them from, directly or indirectly, engaging in the transactions, acts, practices and courses of business alleged above, or in conduct of similar purport and object, in violation of Sections 17(a)(1), (a)(2) and (a)(3) of the Securities Act of 1934[15 U.S.C. §§77q(a)(1)(2), 77q(a)(2) and 77q(a)(3)], Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Exchange Act [15 U.S.C. §§78j(b), 78m(a), 78m(b)(2)(A), 78m(b)(2)(B) and 78m(b)(5)], and Rules 10b-5, 12b-20, 13a-1, 13a-13, and 13b2-1 promulgated thereunder [17 C.F.R. §§240.10b-5, 240.12b-20, 240.13a-1, 240.13a-13, and 240.13b2-1.]

III.

Issue an Order requiring Defendant BMS to disgorge the ill-gotten gains that the Company received as a result of its wrongful conduct.

IV.

With regard to Defendant BMS' violative transactions, acts, practices and courses of business set forth herein, issue an Order imposing appropriate civil penalties pursuant to Section

20(d) of the Securities Act of 1933 [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Securities Exchange Act of 1934 [15 U.S.C. §78u(d)(3)].

V.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

Granting such other and further relief as the Court may deem appropriate.

Respectfully submitted,

Dated: August 4, 2004

s/_______________________

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